UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,803	12/05/2003	Vikas Agarwal	JP920030194US1	2259

7590   10/08/2008

Frederick W. Gibb, III
McGinn & Gibb, PLLC
Suite 304
2568-A Riva Road
Annapolis, MD 21401

EXAMINER
CUFF, MICHAEL A

ART UNIT	PAPER NUMBER
3741	

MAIL DATE	DELIVERY MODE
10/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 July 2008*.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-12 and 14-17* is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1,3-12 and 14-17* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The new limitation added to independent claims 1 and 10 recites "providing resource usage information..., said providing comprising allocating". The newly added "said providing comprising allocating" does not make grammatical sense and makes the claim unclear. In a method step starting with term "providing", "providing" needs to be followed by a noun (i. e. information). Providing allocating is unclear.

Claim 9 uses means plus function language. The new limitations make it unclear which structure applies to the "means for providing".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-12 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halliday et al. in view of Birkestrand et al.

Halliday et al. shows all of the limitations of the claims except for specifying allocating the recorded monitoring information.

Halliday et al. shows, figure 4, a system for accurate time and usage based metering of client application or client application feature usage and the reporting of said usage to a site on a public network.

From page 3, second column:

A basic overview of operation of the present invention is as follows:

A user will first create an account with the central billing site 1J and add some credit to his account using well known financial on site or remote transaction facilities and methods.

The user will then load from a data storage medium (such as a magnetic disk or tape, optical disk including CD ROM and DVD, electronic storage media including ROMcard and RAM-card, or any other suitable data storage means), or download from a proprietor's website to his local computer, one or more specially configured software packages. (Downloaded software is a network-accessible computer resource) These packages may include, in addition to the client application, an application library having metering means for developing and communicating usage information to an also included metering monitor. An included login tool provides an interactive front end to the metering monitor and enables the user to logon to the remote metering system. The logon process will map the local user on the client computer to an account held in the remote database, and such account will be charged as usage of an application is accumulated (process accounting information for use of computing resources). Once

logged on, any applications running as a local user will be charged to the remote

account. The metering monitor software on the client computer is responsible for

accepting usage information from a client application and forwarding that information to

the central billing server. Further, the metering monitor is operative to track application

exits and to close charging sessions for applications that exit spuriously. In an

alternative embodiment of the present invention, the metering monitor may also act as a

proxy server, accumulating metering information and forwarding the information as a

batch to the central server at periodic intervals set by the server. This is intended to

minimize the amount of time the client computer needs to be in contact with its metering

server.

Figure 5 and paragraph 0071 shows one embodiment of a metering monitor 4A

that can monitor a plurality of client applications 4C that may be started by many

different users on the same client computer 1A (service requests being from different

users).

Applications (service request) are executed. As the applications execute vendor

code calls to the client library to indicate that features are in use, the library will forward

this information to the metering monitor. The metering monitor (recording) will then

associate this application with a server account via the map of logged-in users and

forward the information to the metering server.

On the metering server, usage reports are compared to a tariff sheet for the user

and the account credit value is reduced by an amount as determined by the rate

(proportion, relative weight, weighted manner) and length of use of a feature.

Alternatively, charges could be accumulated and billed to the user. While the system of the present invention retroactively accumulates and charges for features used, facilities are included to prevent misuse of the system. These facilities include: means for disabling the client applications if usage information does not reach the metering server on a periodic basis, and each communication with the server adds several metrics to help determine if the user is trying to circumvent the system. The metrics may include but are not limited to: transmission times, local times, CPU usage, memory usage and user information.

Page 5, paragraph [0077] shows overlapping requests, includes active lists, it then checks at 9B for the existence of another metering monitor running on the same the client computer using the same the configuration file. If such a metering monitor exists, the newly started monitor quits.

From Webster's Dictionary, allocate can mean to set apart or earmark.

Multiple clients are using vendor code (a computing resource), which means that vendor code has been set apart for their use or vendor code is being allocated for each client. Because the system has a means for disabling the code, it can refuse to allocate resource usage. The overlapping request is addressed above.

The system uses a pool of features in order to provide an application. A feature is an atomic chargeable unit of functionality. It is in this way the overlapping usage or features used in more than one application can be allocated for different applications or service requests.

Birkestrand et al. teaches a system to expand resources available to a logical

partition. From paragraphs 0045 and 0046, the host service provider may configure the

resource monitor/meter 147 to retain a list of grid resources 145 from participating

systems or partitions that are registered as grid resources. The grid resources 145 may

couple with resource monitor/meter 147 to allocate and de-allocate grid resources 145

to and from logical partitions based upon usage of resources by the logical partitions

and partition thresholds. The list of grid resources 145 may include, e.g., physical

and/or logical descriptions of processor resources, memory resources, and other

resources available for allocation as grid resources as well as priorities and utilization

threshold(s) for grid resources associated with the participating logical partitions. The

host service provider may configure the resource monitor/meter 147 to monitor usage of

partition resources, grid resources 145, and on-demand resources 130; to meter usages

of resources having an associated usage fee; and to maintain a log of usages on a

customer-by-customer basis for billing the corresponding customers. In some

embodiments, the resource monitor/meter 147 periodically generates a bill for each

client based upon the log and, in several of these embodiments, automatically transmits

the bill to the corresponding customers.

From paragraph 0078, rate determiner 256 may determine rates to charge clients

for usage of grid resources and/or on-demand resources 240. More specifically, rate

determiner 256 may determine a rate based upon usage of the grid resources by the

client to offset costs associated with enabling on-demand resources 240, a rate based

upon usage of on-demand resources 240 by the client to at least recoup costs

associated with enabling on-demand resources 240, and/or a rate to charge the client

based upon an agreement for allocations of the grid resources and the on-demand

resources 240 to the logical partition associated with the client. For example, an

enablement code to enable on-demand resources 240 may be offered at a lower rate

when the enablement code is associated with a time limit within which the resources

may be utilized. The service provider may purchase the enablement code and rate

determiner 256 may split the costs between one or more clients based upon their actual

usage or allocations based upon their actual usage of on-demand resources 240.

The Birkestrand et al. system provides an efficient means for allocating

resources and for charging customer for the allocated resources.

Based on the teaching of Birkestrand et al., it would have been obvious to one of

ordinary skill in the art, at the time the invention was made, to modify the Halliday

system to incorporate the allocating method of the Birkestrand et al. system in order to

provide an efficient means for allocating resources and for charging customer for the

allocated resources.

Examiner, per 37 CFR 1.104 (c) (2), has pointed out particular references

contained in the prior arts of record in the body of this action for the convenience of the

applicant. Although the specified citations are representative of the teachings in the art

and are applied to the specific limitations within the individual claim, other passages and

figures may apply as well. It is respectfully requested from the applicant, in preparing

the response, to consider fully the entire references as potentially teaching all or part of

the claimed invention, as well as the context of the passage as taught by the prior arts

of disclosed by the examiner.

Response to Arguments

Applicant's arguments with respect to all claims have been considered but are

moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Michael Cuff whose telephone number is (571) 272-

6778. The examiner can normally be reached on 8:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Cuff/
Primary Examiner, Art Unit 3627